

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Morradio, Inc.	)	File Number: EB-00-AT-061
WLMA(AM)	)	
Greenwood, SC	)	NAL/Acct. No.: X3248002

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: March 30, 2000**

By the Enforcement Bureau, Atlanta Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Morradio, Inc. (“Morradio”) has apparently violated sections 73.1690(b), 73.3538(a)(4) and 11.35(a) of the Commission’s Rules<sup>1</sup> for failure to license changes in the antenna structure location and failure to install and maintain emergency alert system (“EAS”) equipment. We conclude that Morradio is apparently liable for forfeiture in the amount of twelve thousand dollars (\$12,000).

**II. BACKGROUND**

2. Radio station WLMA(AM) is licensed to broadcast on 1350 kHz in Greenwood, SC. On October 27, 1994, an agent of the Commission’s Atlanta Office inspected WLMA(AM) and found several violations. An Official Notice of Violation (NOV) was issued to Morradio on November 3, 1994, for violations found during the inspection. Among other violations, Morradio was cited for failure to install and maintain Emergency Broadcast System (EBS)<sup>2</sup> equipment and for failure to license changes in the antenna structure location.<sup>3</sup> On October 21, 1998, a NAL

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<sup>1</sup> 47 C.F.R. §§ 73.1690(b), 73.3538(a)(4) and 11.35(a).

<sup>2</sup> EBS is the predecessor to the current EAS.

<sup>3</sup> The licensee had relocated the station’s antenna tower to a site 10 miles from the licensed site without obtaining Commission authority. The new site was determined by Global Positioning Satellite to be located at coordinates 34° 21’ 26” N and 82° 05’ 52” W. The licensed site was for coordinates 34° 13’ 06” N and 82° 08’ 00” W.

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was issued to Morradio for failure to license changes in the antenna structure location. On March 31, 1999, the Commission found Morradio liable for a forfeiture amount of \$4,000 for failure to license changes in the antenna structure location.<sup>4</sup>

3. On January 21, 2000, agents from the Enforcement Bureau's Atlanta Office inspected Station WLMA(AM) and found several violations. On February 2, 2000, the District Director of the Atlanta Office issued an NOV to Morradio, citing all violations found. Among other violations, Morradio was again cited for failure to license changes in the antenna structure location<sup>5</sup> and for failure to install and maintain EAS equipment. On March 16, 2000, the Atlanta Office received a response letter from Morradio indicating that some of the violations had been corrected and that the other violations would be corrected on future dates.

### **III. DISCUSSION**

4. Morradio, as the licensee of the broadcast station WLMA(AM), is responsible for knowledge of, and compliance with, the applicable sections of the Commission's rules. Both Sections 73.1690(b) and 73.3538(a)(4) state that changes in antenna location may be made only after the grant of a construction permit. As revealed in the January 21, 2000, inspection, Morradio had relocated the tower to a site approximately 0.6 miles from the licensed site, without obtaining Commission authority. Morradio's response to the NOV asserted that Morradio "had understood that because of the very short distance of the move from the licensed site, that a new application was unnecessary." Morradio further promised to remedy the violation with the filing of a "proper site change application." Lack of knowledge of the rules and remedial action to correct a violation are not sufficient justifications for not imposing a forfeiture, particularly since the licensee has a history of committing this same type of violation.

5. Section 11.35(a) states that stations must have EAS encoders, EAS decoders and attention signal generating and receiving equipment installed and operating during times the broadcast station is in operation. The rules further stipulate that broadcast stations were to have the EAS equipment installed by January 1, 1997. When the station was inspected on January 21, 2000, there was no EAS equipment installed at the station and there was no EAS log demonstrating that

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<sup>4</sup> The Forfeiture Order was adopted March 31, 1999 and Released April 2, 1999. The Forfeiture Order also granted Morradio a special temporary authority to commence operating at its originally licensed site, 34° 13' 06" N and 82° 08' 00" W.

<sup>5</sup> The licensee had relocated the station's antenna tower to a site 0.6 miles from the licensed site. The new site was determined by Global Positioning Satellite to be located at coordinates 34° 13' 25" N and 82° 07' 30" W. The licensed site was for coordinates 34° 13' 06" N and 82° 08' 00" W.

the station had ever installed EAS equipment since the January 1, 1997, deadline. The licensee told inspectors that he had ordered EAS equipment, but blamed the EAS manufacturer for non-delivery. No evidence was provided to corroborate this claim. In the response to the NOV, the licensee stated that “[Morradio] is accepting bids and gathering information about the EAS systems and expects to order the system on or before April 1, 2000, and have [it] completely installed and fully operational by April 15, 2000.” Remedial action to correct the violation is not sufficient justification for not imposing a forfeiture, particularly since the station was knowingly in violation for over three years and the licensee has a history of similar violations.<sup>6</sup>

6. Section 503(b) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 503(b)(1),<sup>7</sup> provides that any person who willfully<sup>8</sup> and repeatedly<sup>9</sup> fails to comply with the terms and conditions of his license or the Commission’s rules shall be liable for a forfeiture penalty. Based on the above evidence, we find that Morradio willfully and repeatedly violated Sections 73.1690(b), 73.3538(a)(4) and 11.35(a)<sup>10</sup> of the Commission’s rules.

7. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”), the base forfeiture amounts are \$4,000 for the construction and operation at an unauthorized location and \$8,000 for the failure to have EAS equipment installed.<sup>11</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and

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<sup>6</sup> On November 3, 1994, Morradio was issued an NOV for failure to have EBS equipment installed at the station. On December 23, 1996, Morradio was issued an NOV for failure to send EBS tests and for failure to maintain EBS logs.

<sup>7</sup> 47 U.S.C. § 503(b)(1). *See also* Section 1.80(a)(1) and (2), 47 C.F.R. § 1.80(a)(1) and (2).

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ....” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>10</sup> 47 C.F.R. §§ 73.1690(b), 73.3538(a)(4) and 11.35(a)

<sup>11</sup> 12 FCC Rcd 17087 (1997), *recon. Denied*, 15 FCC Rcd 303 (1999).

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other such matters as justice may require.<sup>12</sup> Morradio's violations were repeated and willful, and the licensee has a prior history of similar violations. Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, a \$12,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the communications Act of 1934, as amended<sup>13</sup>, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules<sup>14</sup>, Morradio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for violating the Commission's rules.<sup>15</sup>

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules<sup>16</sup>, within thirty days of the released date of this NOTICE OF APPARENT LIABILITY, Morradio, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3248002.

11. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, Attn: Enforcement Bureau –TPSD, NAL/Acct. No. X3248002, and must include the NAL/Acct. No. X3248002.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent

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<sup>12</sup> 47 U.S.C. § 503(b)(2)(D). *See also Forfeiture Policy Statement*, 12 FCC Red at 17100-01 (discussion of upward and downward adjustment factors).

<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>15</sup> 47 C.F.R. §§ 73.1690(b), 73.3538(a)(4) and 11.35(a)

<sup>16</sup> 47 C.F.R. § 1.80.

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three-year period; (2) financial statements prepared according to generally accepted accounting practices ; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>17</sup>

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Morradio, Inc., at 207 Wingert Road, Greenwood, SC 29649.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce  
District Director, Atlanta Office

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<sup>17</sup> See 47 C.F.R. § 1.1914.